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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,335	10/27/2003	Stephen H. Cate	P03958US2-137B	3859
34082	7590	04/06/2004	EXAMINER	
ZARLEY LAW FIRM P.L.C. CAPITAL SQUARE 400 LOCUST, SUITE 200 DES MOINES, IA 50309-2350			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/694,335	CATE ET AL.	
	Examiner	Art Unit	
	David J Parsley	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 October 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 7-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 7-9 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 October 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All . b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Preliminary Amendment

1. Entry of applicant's preliminary amendment dated 10-27-03 is acknowledged.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it contains over 150 words.

Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8-9 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. Claim 8 states that a PLC is provided to sense the casing hopper and a PLC is a device that cannot be used as a sensor but instead is a device which controls a sensor and therefore the claimed invention is inoperative.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "the longitudinal movement of the stuffing tube" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "the operation of the chuck" in lines 9-10. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "the operation of the linking chains" in lines 10-11. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "the operation of the casing filling station" in lines 15-16. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,539,796 to Nakamura.

Referring to claim 7, Nakamura discloses a method for filling a natural hollow elongated casing with a meat emulsion comprising, providing a casing filling station – proximate 3 and 8, including a stuffing tube – at 3, for supporting the casing to be filled with the meat emulsion, providing a casing hopper – at 1, adjacent the casing filling station – see figures 6-8, to serve as a reservoir for a plurality of shirred artificial casings for delivery of shirred artificial casings for mounting on the stuffing tube – at 3, and moving the casing hopper away from its position adjacent the casing filling station when natural casings are placed on the stuffing tube in the casing filling station – see for example figures 6-8 and columns 10-11 describing operation mode 4, where figures 6-8 show that it is inherent that the portion of the casing hopper which allows individual feeding of the casings to the stuffing position is movable to and away from the stuffing tube and further the retraction of the stuffing tube – 3 away from the hopper – 1 after stuffing is completed allows for the hopper to be moved away from the stuffing tube and further as seen in columns 10-11 both natural and artificial casings are shown to be capable of being

used in the same operation mode and therefore the hopper can contain artificial casings while a natural casing is on the stuffing tube.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. as applied to claim 7 above, and further in view of U.S. Patent No. 5,372,537 to Stiles or U.S. Patent No. 6,066,035 to Hergott.

Referring to claims 8-9, Nakamura further discloses a controller – at 31-32, is provided and senses when the casing hopper is in its position adjacent the casing filling station to thereupon control the longitudinal movement of the stuffing tube – 3, to maintain the stuffing tube in a non-automatic extension mode, to hold a follower – at proximate 3a as seen in figure 9 or 4, connected to the stuffing tube in a retracted position, and to maintain the casing hopper in its position adjacent the casing filling station – see for example figures 6-8 and columns 6-9, where it states that the entire process can be automatic and it is inherent that the controller senses the location of the hopper – at 1, in automatic operation. Nakamura further discloses a natural casing is placed on the stuffing tube – 3, with the stuffing tube being in a partially retracted position to locate a discharge end of the stuffing tube upstream of the casing filling station,

actuating the controls – at 31-32 and/or 35-36, to cause the stuffing tube to extend through a chuck – at 10, and to cause a meat pump – t 5, to start pumping meat through the stuffing tube when the position of the stuffing tube through the chuck is sensed, and to start rotation of the chuck and the stuffing tube, and to start the operation of linking chains and a conveyor – at 14, located downstream of the casing filling station, manually advancing the follower – proximate 3a using manual controls – at 36, and sensing its arrival at a position adjacent a twister mechanism – at 12-13, containing the chuck – at 10, and causing the controls to stop the operation of the casing filling station – see for example figures 6-8 and columns 6-9. Nakamura does not disclose the controller is a PLC. Stiles and Hergott do disclose the controller is a PLC – see for example column 7 lines 47-64 of Stiles and figures 2-3 of Hergott. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Nakamura and add the controller being a PLC of Stiles or Hergott, so as to allow for the controller to have a memory to store data on different types of sausage casings and to allow for the controls to be easier to use by the controller.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to method of filling meat casings in general:

U.S. Pat. No. 3,150,410 to Washburn – shows casing hopper

U.S. Pat. No. 3,191,222 to Townsend – shows casing hopper
U.S. Pat. No. 3,672,001 to Grieder – shows movable casing hopper
U.S. Pat. No. 4,434,527 to Staudenrausch – shows casing hopper
U.S. Pat. No. 4,569,101 to Tribbett – shows movable casing hopper
U.S. Pat. No. 5,013,279 to Southworth – shows movable casing hopper
U.S. Pat. No. 5,092,814 to Kasai – shows casing hopper
U.S. Pat. No. 5,180,327 to Kasai – shows casing hopper
U.S. Pat. No. 5,297,983 to Mueller – shows casing hopper
U.S. Pat. No. 5,813,906 to Phillips – shows casing hopper
U.S. Pat. No. 5,813,907 to Lebsack – shows casing hopper
U.S. Pat. No. 5,842,914 to Vermeer – shows casing hopper
U.S. Pat. No. 5,951,391 to Hergott – shows PLC control
U.S. Pat. No. 5,993,307 to Hamblin – shows casing hopper
U.S. Pat. No. 6,056,635 to Vermeer – shows PLC control
JP Pat. No. 2-257824 – shows casing hopper
EP Pat. No. 0399582 – shows casing hopper

8. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

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Art Unit: 3643

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Peter M. Poon
Supervisory Patent Examiner
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